

Executive Summary – Enforcement Matter – Case No. 42105

Lief Zars

RN101217396

Docket No. 2011-1229-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

Media:

PWS

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Waring Knoll Subdivision, located 10 miles north of Boerne on Farm-to-Market Road 281, Kendall County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: October 21, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$4,743

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$4,743

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - N/A

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 42105

Lief Zars

RN101217396

Docket No. 2011-1229-PWS-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: June 6, 2011

Date(s) of NOE(s): June 10, 2011

Violation Information

1. Failed to submit a Disinfectant Level Quarterly Operating Report (“DLQOR”) to the Executive Director each quarter by the tenth day of the month following the end of each quarter [30 TEX. ADMIN. CODE § 290.110(e)(4)(A) and (f)(3)].
2. Failed to mail or directly deliver one copy of the Consumer Confidence Reports (“CCR”) to each bill paying customer by July 1 of each year and failed to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the Facility and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1 of each year [30 TEX. ADMIN. CODE §§ 290.271(b), 290.274(a) and 290.274(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

a. Within 30 days:

- i. Mail or directly deliver one copy of the 2010 CCR prepared using the compliance monitoring data to each bill paying customer and make a good faith effort to deliver the 2010 CCR to non-bill paying customers; and

ii. Update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified DLQORs.

b. Within 45 days:

- i. Submit written certification demonstrating compliance with Ordering Provision a.ii; and

ii. Submit to the Commission a copy of the CCR provided to customers of the Facility and the certification that the CCR has been distributed to the customers of the Facility

Executive Summary – Enforcement Matter – Case No. 42105

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RN101217396

Docket No. 2011-1229-PWS-E

and that the information in the CCR is correct and consistent with the compliance monitoring data.

c. Within 60 days, submit written certification demonstrating compliance with Ordering Provision b.ii;

d. Within 90 days, begin submitting DLQORs to the Executive Director by the tenth day of the month following the end of each quarter; and

e. Within 105 days, submit written certification demonstrating compliance with Ordering Provision d.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Merrilee Hupp, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4490; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.

TCEQ SEP Coordinator: N/A

Respondent: Leif Zars, Owner, 438 Sandau Road, San Antonio, Texas 78216
Mary Kassahn (P.O.A.), Executive Administrator, Lief Zars, 438 Sandau Road, San Antonio, Texas 78216

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	13-Jun-2011	Screening	5-Jul-2011	EPA Due	
	PCW	13-Jul-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	Lief Zars		
Reg. Ent. Ref. No.	RN101217396		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	42105	No. of Violations	2
Docket No.	2011-1229-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Merrilee Hupp
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,200
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	62.0% Enhancement	Subtotals 2, 3, & 7	\$1,364
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Notes: Enhancement for 12 NOVVS with same/similar violations and one NOV with dissimilar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$1,189
Approx. Cost of Compliance \$1,185
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,564
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OTHER FACTORS AS JUSTICE MAY REQUIRE	33.1%	Adjustment	\$1,179
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided costs associated with the violations.

Final Penalty Amount	\$4,743
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,743
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$4,743
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Screening Date 5-Jul-2011

Docket No. 2011-1229-PWS-E

PCW

Respondent Lief Zars

Policy Revision 2 (September 2002)

Case ID No. 42105

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101217396

Media [Statute] Public Water Supply

Enf. Coordinator Merrilee Hupp

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	12	60%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 62%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for 12 NOVS with same/similar violations and one NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 62%

Screening Date 5-Jul-2011

Docket No. 2011-1229-PWS-E

PCW

Respondent Lief Zars

Policy Revision 2 (September 2002)

Case ID No. 42105

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101217396

Media [Statute] Public Water Supply

Enf. Coordinator Merrilee Hupp

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 290.110(e)(4)(A) and (f)(3)

Violation Description

Failed to submit a Disinfectant Level Quarterly Operating Report ("DLQOR") to the Executive Director each quarter by the tenth day of the month following the end of each quarter. Specifically, at the time of the record review, it was documented that the Respondent did not submit DLQORs for the first quarter of 2006 through the fourth quarter of 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirements were not met.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 20

1736 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,000

Twenty quarterly events are recommended, calculated for the quarters in which DLQORs were not submitted.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,053

Violation Final Penalty Total \$4,312

This violation Final Assessed Penalty (adjusted for limits) \$4,312

Economic Benefit Worksheet

Respondent Lief Zars
Case ID No. 42105
Reg. Ent. Reference No. RN101217396
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$820	10-Apr-2006	10-Jan-2011	5.67	\$233	\$820	\$1,053
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided costs include the estimated amount necessary to maintain disinfectant residual level data and report it to the Executive Director on a quarterly basis, calculated for the period in which the reports were due.

Approx. Cost of Compliance

\$820

TOTAL

\$1,053

Screening Date 5-Jul-2011

Docket No. 2011-1229-PWS-E

PCW

Respondent Lief Zars

Policy Revision 2 (September 2002)

Case ID No. 42105

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101217396

Media [Statute] Public Water Supply

Enf. Coordinator Merrilee Hupp

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code §§ 290.271(b), 290.274(a) and 290.274(c)

Violation Description

Failed to mail or directly deliver one copy of the Consumer Confidence Report ("CCR") to each bill paying customer by July 1 of each year and failed to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the Facility and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1 of each year. Specifically, the Respondent did not mail or directly deliver the CCRs to the Facility's customers for the years 2008 and 2009 nor did the Respondent submit the CCR or the required certification to the TCEQ for the years 2008 and 2009.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the requirements were not met.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 2

731 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	X
single event	

Violation Base Penalty \$200

Two annual events are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$200

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$136

Violation Final Penalty Total \$431

This violation Final Assessed Penalty (adjusted for limits) \$431

Economic Benefit Worksheet

Respondent Lief Zars
Case ID No. 42105
Reg. Ent. Reference No. RN101217396
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	6-Jun-2011	31-Mar-2012	0.82	\$10	n/a	\$10
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update operational guidance and conduct employee training to ensure that DLQORs are submitted. Date required is the investigation date and final date is the date the most current DLQOR is expected to be submitted.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$115	1-Jul-2009	1-Jul-2010	1.92	\$11	\$115	\$126
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided costs include the amount necessary to produce copies of the CCR and mail or directly deliver the reports to customers of the water supply, calculated for the years in which no reports were distributed.

Approx. Cost of Compliance

\$365

TOTAL

\$136

Compliance History

Customer/Respondent/Owner-Operator:	CN600659536	ZARS, LIEF	Classification:	Rating:
Regulated Entity:	RN101217396	WARING KNOLL SUBDIVISION	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY		REGISTRATION	1300039
Location:	10 ML N OF BOERNE ON FM 281			
TCEQ Region:	REGION 13 - SAN ANTONIO			
Date Compliance History Prepared:	July 13, 2011			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 13, 2006 to July 13, 2011			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Merrilee Hupp		Phone:	(512) 239 - 4490

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership/operator of the site during the compliance period? | No |
| 3. If Yes, who is the current owner/operator? | N/A |
| 4. If Yes, who was/were the prior owner(s)/operator(s)? | N/A |
| 5. When did the change(s) in owner or operator occur? | N/A |
| 6. | |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	05/08/2009	(743240)
2	06/08/2011	(932686)
3	06/08/2011	(932960)
4	10/01/2009	(932961)
5	07/21/2009	(932962)
6	03/27/2009	(932963)
7	07/19/2007	(932964)
8	07/19/2007	(932965)
9	07/19/2007	(932966)
10	07/19/2007	(932994)
11	07/19/2007	(932997)
12	12/22/2010	(933002)
13	11/03/2009	(933009)
14	06/10/2011	(933114)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.110(f)(2) 30 TAC Chapter 290, SubChapter F 290.110(f)(3)		
Description:	This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the first quarter of 2007.		
Date	07/19/2007	(932965)	CN600659536
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.110(f)(2) 30 TAC Chapter 290, SubChapter F 290.110(f)(3)		
Description:	This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the fourth quarter of 2006.		
Date	07/19/2007	(932997)	CN600659536
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.110(f)(2) 30 TAC Chapter 290, SubChapter F 290.110(f)(3)		
Description:	This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the first quarter of 2006.		
Date	07/19/2007	(932966)	CN600659536
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.110(f)(2) 30 TAC Chapter 290, SubChapter F 290.110(f)(3)		
Description:	This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the third quarter of 2006.		
Date	07/19/2007	(932994)	CN600659536
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.110(f)(2) 30 TAC Chapter 290, SubChapter F 290.110(f)(3)		
Description:	This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the second quarter of 2006.		
Date	03/27/2009	(932963)	CN600659536
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.110(f)(2) 30 TAC Chapter 290, SubChapter F 290.110(f)(3)		
Description:	This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the fourth quarter of 2008.		
Date	05/06/2009	(743240)	CN600659536
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)		
Description:	Failure to make available a sanitary control easement for a public water supply well during an investigation . A sanitary control easement covering all property within 150 feet of a public water supply well must be secured from all adjacent landowners and recorded at the county courthouse to ensure that hazards (septic tank drainfields) will not develop in the well area. Easements are not required for road or railroad right-of-ways.		
Date	07/21/2009	(932962)	CN600659536
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.110(f)(2) 30 TAC Chapter 290, SubChapter F 290.110(f)(3)		
Description:	This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the first quarter of 2009.		
Date	10/01/2009	(932961)	CN600659536
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.110(f)(2) 30 TAC Chapter 290, SubChapter F 290.110(f)(3)		
Description:	This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the second quarter of 2009.		
Date	11/03/2009	(933009)	CN600659536
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter H 290.271(b) 30 TAC Chapter 290, SubChapter H 290.274(a)		
Description:	This system did not deliver the annual Consumer Confidence Report (CCR) for 2008 to its bill-paying customers.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter H 290.274(c)		
Description:	This system failed to deliver a copy and certification of delivery of the annual Consumer Confidence Report (CCR) for the 2008 CCR year to the TCEQ.		
Date	12/22/2010	(933002)	CN600659536
Self Report?	NO	Classification:	Moderate

Citation:	30 TAC Chapter 290, SubChapter H 290.271(b)	
	30 TAC Chapter 290, SubChapter H 290.274(a)	
Description:	This system did not deliver the annual Consumer Confidence Report (CCR) for 2009 to its bill-paying customers.	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 290, SubChapter H 290.274(c)	
Description:	This system failed to deliver a copy and certification of delivery of the annual Consumer Confidence Report (CCR) for the 2009 CCR year to the TCEQ.	
Date	06/08/2011 (932960)	CN600659536
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.110(f)(2)	
	30 TAC Chapter 290, SubChapter F 290.110(f)(3)	
Description:	This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the third quarter of 2010.	
Date	06/08/2011 (932686)	CN600659536
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.110(f)(2)	
	30 TAC Chapter 290, SubChapter F 290.110(f)(3)	
Description:	This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the fourth quarter of 2010.	

- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LIEF ZARS
RN101217396**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2011-1229-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Lief Zars ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that he has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply located 10 miles north of Boerne on Farm-to-Market Road 281 in Kendall County, Texas (the "Facility") that has approximately 15 service connections and serves at least 25 people per day for at least 60 days per year.

2. During a record review conducted on June 6, 2011, TCEQ staff documented that the Respondent did not submit a Disinfectant Level Quarterly Operating Report ("DLQOR") to the Executive Director each quarter by the tenth day of the month following the end of each quarter. Specifically, at the time of the record review, it was documented that the Respondent did not submit the DLQORs for the first quarter of 2006 through the fourth quarter of 2010.
3. During a record review conducted on June 6, 2011, TCEQ staff documented that the Respondent did not mail or directly deliver one copy of the Consumer Confidence Reports ("CCR") to each bill paying customer by July 1 of each year and did not submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the Facility and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1 of each year. Specifically, the Respondent did not mail or directly deliver the CCRs to the Facility's customers for the years 2008 and 2009 nor did the Respondent submit the CCR or the required certification to the TCEQ for the years 2008 and 2009.
4. The Respondent received notice of the violations on June 17, 2011.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to submit a DLQOR to the Executive Director each quarter by the tenth day of the month following the end of each quarter, in violation of 30 TEX. ADMIN. CODE § 290.110(e)(4)(A) and (f)(3).
3. As evidenced by Findings of Fact No. 3, the Respondent failed to mail or directly deliver one copy of the CCR to each bill paying customer by July 1 of each year and failed to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the Facility and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1 of each year, in violation of 30 TEX. ADMIN. CODE §§ 290.271(b), 290.274(a) and 290.274(c).
4. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of Four Thousand Seven Hundred Forty-Three Dollars (\$4,743) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The

Respondent has paid the Four Thousand Seven Hundred Forty-Three Dollar (\$4,743) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Four Thousand Seven Hundred Forty-Three Dollars (\$4,743) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Lief Zars, Docket No. 2011-1229-PWS-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Mail or directly deliver one copy of the 2010 CCR prepared using the compliance monitoring data to each bill paying customer and make a good faith effort to deliver the 2010 CCR to non-bill paying customers, in accordance with 30 TEX. ADMIN. CODE § 290.274; and
 - ii. Update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified DLQORs, in accordance with 30 TEX. ADMIN. CODE § 290.110.
 - b. Within 45 days after the effective of this Agreed Order:
 - i. Submit written certification as described below in Ordering Provision No. 2.e, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.ii; and
 - ii. Submit to the Commission a copy of the CCR provided to customers of the Facility and the certification that the CCR has been distributed to the

customers of the Facility and that the information in the CCR is correct and consistent with the compliance monitoring data, in accordance with 30 TEX. ADMIN. CODE § 290.274. The copy of the CCR and certification shall be mailed to:

Public Drinking Water Section
Water Supply Division, MC155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Within 60 days after the effective date of this Agreed Order, submit written certification as described below in Ordering Provision No. 2.e, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.b.ii;
- d. Within 90 days after the effective date of this Agreed Order, begin submitting DLQORs to the Executive Director by the tenth day of the month following the end of each quarter, in accordance with 30 TEX. ADMIN. CODE § 290.110. DLQORs shall be submitted to the address referenced in Ordering Provision No. 2.b.ii; and
- e. Within 105 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.d. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Public Drinking Water Section Manager
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this

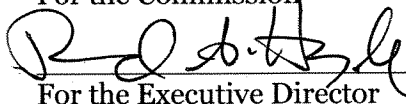
paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

11/9/11
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Lief Zars. I am authorized to agree to the attached Agreed Order on behalf of Lief Zars, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Lief Zars waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

8/29/2011
Date

Mary Kassahu (P.O.A.)
Name (Printed or typed)
Authorized Representative of
Lief Zars

Executive Administrator
P.O.A.
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.